

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SEA STAR LINE, LLC,
a limited liability company,

Plaintiff,

CASE NO. 05-CV-00245 (JJF)

-vs-

EMERALD EQUIPMENT LEASING, INC.,
a corporation,

Defendant.

**SEA STARLINES, LLC'S MOTION TO DISMISS
EMERALD EQUIPMENT LEASING, INC.'S COUNTERCLAIM**

Pursuant to Fed. R. Civ. P. 12(b)(6), Plaintiff, SEA STAR LINE, LLC ("SEA STAR"), moves for entry of an Order dismissing the Counterclaim filed by Defendant, EMERALD EQUIPMENT LEASING, INC. ("EMERALD"). As grounds for this Motion, SEA STAR would show the Court:

1. Count I fails to state a claim for relief based on alleged breach of an "E-Mail Agreement".
2. Count II fails to state a claim for relief based on the quasi-contract theory of *quantum meruit*.
3. Count III fails to state a claim for relief based on 11 U.S.C. §342.
4. Count IV [first] fails to state a claim for an equitable accounting cognizable in this Court.
5. Count IV [second] through Count VIII fail to state "tort" claims for relief.

The Counterclaim discloses:
{10002617.DOC}

(a) EMERALD's "tort" claims are not separate from and independent of the alleged breaches of contract. In fact, the Counterclaim "incorporates" the breach-of-contract paragraphs into each "tort" count.

(b) The economic loss doctrine proscribes EMERALD's "tort" claims.

(c) Assuming *arguendo* that EMERALD could plead tort claims cognizable in this Court, its Counterclaim fails to comply with Fed. R. Civ. P. 9(b).

In support of this Motion, SEA STAR, contemporaneously herewith, submits its opening brief.

May 11, 2005

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of May, 2005 a copy of the foregoing *Sea Star Lines, LLC's Motion to Dismiss Emerald Equipment Leasing, Inc.'s Counterclaim* was served on the parties listed below by eFiling and in the manner indicated:

FIRST CLASS MAIL

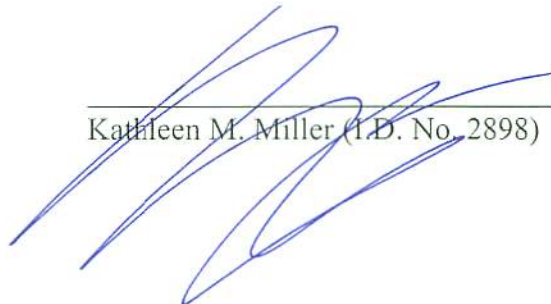
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